

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Clarence Abney,

PLAINTIFF

v.

Aiken County Detention Center; and  
Correctional Officer Kull,

DEFENDANTS

Case No. 1:23-cv-00693-TLW

**ORDER**

Clarence Abney (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, brings this civil action pursuant to 42 U.S.C. § 1983. ECF No. 1. On February 21, 2023, Plaintiff filed his original complaint against the Aiken County Detention Center (“ACDC”) and Correctional Officer Kull ECF No. 1. Plaintiff asserts that the above-named Defendants violated his constitutional rights during his incarceration at ACDC. *Id.*

Plaintiff’s complaint was referred to the Honorable Shiva H. Hodges, United States Magistrate Judge, for review pursuant to 28 U.S.C. § 36b(b)(1)(B). After Plaintiff filed his complaint, the magistrate judge issued a proper form order and order and notice, informing Plaintiff of specific steps necessary to bringing his action into proper form, which would then allow his complaint to be served on the named Defendants. ECFs No. 9 & 10.

On April 20, 2023, Plaintiff filed an amended complaint adding Captain Gallum and Nurse Sue Ledbetter as defendants. ECF No. 12. His amended complaint, however, only alleged the following facts: “Officer Kull dropped cake

placed back on tray I became sick; Nurse Ledbetter failed to see me until I was ill; Capt. Gallum allowed full restraints while in shower.” *Id.* at 4. Thereafter, the magistrate judge issued a report and recommendation (“Report”) recommending that the amended complaint be summarily dismissed for failure to state a claim. ECF No. 15.

In response to the Report, Plaintiff filed a motion to appoint counsel, ECF No. 17, a motion to amend his complaint, ECF No. 19, and objections to the Report, ECF No. 20. In his objections to the Report, Plaintiff states that he sought to file the amended complaint attached to his motion to amend his complaint, which alleges more facts in support of his claims. ECF No. 20 at 1. He further requests that this Court allow him leave to amend his complaint, asserting that “summary dismissal is not appropriate at this time and requests that magistrate Hodges be allowed to review the lately filed amended complaint de novo and make further determination based upon that document set.” *Id.* at 2.

The Court has reviewed the record. Presently pending are the magistrate judge’s Report, Plaintiff’s objections, Plaintiff’s motion to amend, and Plaintiff’s motion to appoint counsel. The Report is based on Plaintiff’s failure to state a claim. Plaintiff objects to the Report and seeks to amend his claims. The Plaintiff sought to amend his complaint in response to the Report and filed his motion to amend before the deadline for objections to the Report had run. Considering the objections filed and the new, amended complaint now filed, and in light of the magistrate judge’s previous consideration of this case, the Court has conducted a *de novo* review of the

Report. Specifically, Plaintiff's amended complaint sets forth significantly more allegations than previously set forth in his previously pleadings. Hence, the Court recommits this matter back to the magistrate judge for further review and consideration of Plaintiff's motion to amend, amended complaint, and motion to appoint counsel.

**IT IS SO ORDERED.**

s/ *Terry L. Wooten*  
Terry L. Wooten  
Senior United States District Judge

August 8, 2023  
Columbia, South Carolina